

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC#  
DATE FILED: 4/22/08

----- X

TEACHERS4ACTION, on behalf of its Members; :  
FLORIAN LEWENSTEIN, its Treasurer and :  
Spokesperson; et al., :

Plaintiffs, :

-against- :

MICHAEL G. BLOOMBERG; CITY OF NEW :  
YORK; JOEL KLEIN; NEW YORK CITY :  
DEPARTMENT OF EDUCATION; RANDI :  
WEINGARTEN; UFT; & BETSY COMBIER, :

Defendants. :

----- X

08 Civ. 0548 (VM) (AJP)

**OPINION AND ORDER**

**ANDREW J. PECK, United States Magistrate Judge:**

Plaintiff Florian Lewenstein has requested me to recuse myself because, he alleges, of my "bias," pursuant to 28 U.S.C. §§ 144 and 455. (Dkt. No. 29.) The request is DENIED as frivolous.

The law is clear that "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality [recusal] motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible" and if the Courts' opinion "derives from an extrajudicial source." Litekey v. United States, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994);

see also, e.g., Lightfoot v. Union Carbide Corp., 92 Civ. 6411, 1997 WL 543076 at \*2 (S.D.N.Y. Sept. 4, 1997) ("[D]issatisfaction with a legal ruling . . . is an insufficient basis for recusal, for it in effect would allow 'judge shopping' by plaintiffs."), aff'd, 175 F.3d 1008 (table), 1999 WL 110424 at \*3 (2d Cir. Mar. 1, 1999), cert. denied, 528 U.S. 817, 120 S. Ct. 56 (1999).

My comments to plaintiff's counsel, Edward Fagan, at the hearings, while perhaps not as politely phrased as he or his client would like, were based entirely on his conduct in the litigation – including several equests for "emergency" relief followed by long delays in properly bringing all parties before the Court, and his failure to follow the Court's directives as to how to proceed – and not based on any extra-judicial knowledge or source.

Accordingly, plaintiff's request that I recuse myself is DENIED.<sup>1/</sup>

SO ORDERED.

Dated: New York, New York  
April 22, 2008

  
\_\_\_\_\_  
Andrew J. Peck  
United States Magistrate Judge

Copies by fax & ECF to: Edward D. Fagan, Esq.  
Blanche Greenfield, Esq.  
Judge Victor Marrero

---

<sup>1/</sup> To the extent plaintiff's recusal request is also made pursuant to 28 U.S.C. § 144, Judge Marrero will have to rule on that part of plaintiff's application. Pursuant to § 144, I will take no further action in this case until Judge Marrero rules.